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NO. 80-1924

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1980

IN RE: ALIEN CHILDREN
EDUCATION LITIGATION

STATE OF TEXAS AND
TEXAS EDUCATION AGENCY

Appellants

V.

UNITED STATES

Intervenor-Appellee

AND

CERTAIN NAMED AND UNNAMED
UNDOCUMENTED ALIEN CHILDREN

Appellees

On Appeal From The United States Court Of
Appeals For The Fifth Circuit

MOTION TO AFFIRM

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TABLE OF CONTENTS

I. OPINIONS DELIVERED IN THE COURTS BELOW. . .

II. QUESTIONS PRESENTED . . . . . .

III. STATEMENT OF THE CASE . . . . . .

IV. ARGUMENT. . . . . .

A. Undocumented Immigrants Are Entitled To The Due Process And Equal Protection Clauses Of The Fourteen Amendment.

B. Appellants Have Not Articulated A Sufficient Justification To Support The Challenged Statutes . . . . . .

V. CONCLUSION. . . . . .

CASES

1. Balanos v. Kiley, 509 F.2d 1023, 1025 (2d Cir. 1975). . . . . .

2. Brownell v. Shaung, 352 U.S. 180 (1956)

3. Burrafato v. Department of State, 523 F.2d 554 (2d Cir. 1975), cert. denied 424 U.S. 910 (1976) . . . . . .

4. Castillo-Felix v. INS, 601 F.2d 459, 461, 467 (9th Cir. 1979). . . . . .

5. Certain Named and Unnamed Non-Citizen Children and Their Parents v. State of Texas, 101 S.Ct. 12 (1980) (Mr. Justice Powell) . . . . . .

6. Commercial Standard Fire & Marine Co. v. Galindo, 484 S.W. 2d 636 (Ct.App. Tex. 1

7. Dandridge v. Williams, 397 U.S. 471 (197

8. De Canas v. Bica, 424 U.S. 351 (1976) .

9. Doe v. Plyler, 628 F.2d 448 (5th Cir. 19

10. Dred Scott v. Sanford, 19 How 393, 403 15 L.Ed., 691 (1857). . . . . .

11. Federation for American Immigration Refo v. Klutznick, Civil Action No. 79-3269 (C. Feb. 26, 1980) . . . . . .

12. Flemming v. Nestor, 363 U.S. 603 (1960)

13. Frances v. INS, 532 F.2d 268, 272 (2d Ci

14. Green v. Stanton, 451 F.Supp. 502, 570 (N.D. Ind. 1978). . . . . .

15. Heikkila v. Barber, 345 U.S. 229 (1953)

16. Holly v. Levine, 529 F.2d 1294, 1295-6 (2d Cir. 1976) cert. denied 426 U.S. 954

17. In Re: Alien Children Education Litigati 501 F.Supp. 544 (S.D. Tex. 1980). . . .

18. Lalli v. Lalli, 439 U.S. 259, 264 (1979)

19. Levy v. Louisiana, 391 U.S. 68, 70 (1968

20. Mandel v. Bradley, 432 U.S. 173, 176 (19

21. Missouri ex. rel. Gaines v. Canada, 305 U.S. 337, 350 (1939) . . . . . .

CASES

22. Nizanuddowlah v. Bengal Cabaret, Inc., 399 N.Y.S. 2d Cir. 854 (1977). . . . .

23. Noel v. Chapman, 508 F.2d 1023 (2d Cir cert. denied, 423 U.S. 824 (1975). . .

24. Roemer v. Maryland Public Works Board, 426 U.S. 739, 758 (1976) . . . . . .

25. Santa Clara Co. v. Southern Pacific R. 118 U.S. 394, 396 (1886) . . . . . .

26. Sarorgnan v. U.S., 338 U.S. 491 (1950)

27. Shaughnessy v. Pedreiro, 349 U.S. 48

28. U.S. v. Cortes, 588 F.2d 106, 110 (5th Cir. 1979). . . . . .

29. U.S. v. Gordon-Nikkar, 518 F.2d 97 (5th Cir. 1975). . . . . .

30. United States v. Tsuda Maru, 479 F.Su 519 (D.Alas. 1979) . . . . . .

31. Weber v. Atena Casualty & Surety Corp 406 U.S. 164, 175 (1972) . . . . . .

32. Williams v. Williams, 328 F.Supp. 138 (V.I.D. St. Crois 1971). . . . . .

33. Wong Wing v. U.S., 163 U.S. 228, 238

34. Yassini v. Crosland, 613 F.2d 219 (9th Cir. 1980). . . . . .

AUTHORITIES

1. Antieau, Modern Constitutional Law, 915.39 at 708 (1969) . . . . . .

2. Attorney General of Texas Opinion No. H-586 (April 1975) . . . . . .

STATUTES AND REGULATIONS

1. 8 U.S.C. §§ 1105a, 1158, 1182(c), 125 1252, 1253(h) and 1254 . . . . . .

2. 8 C.F.R. §§ 3.6, 208, 242.5(3), 242.8 242.17(a) and (c), 242.20, 243.1 and

3. Section 21.031, Texas Education Code Tit. 2 (Vernon 1980) . . . . . .

NO. _____

IN THE
SUPREME COURT OF THE UNI
OCTOBER TERM, 19

IN RE: ALIEN CHIL
EDUCATION LITIGAT

STATE OF TEXAS A
TEXAS EDUCATION AG

V.

UNITED STATES

Inter

AND

CERTAIN NAMED AND U
UNDOCUMENTED ALIEN C

On Appeal From The United S
Appeals For the Fifth

MOTION TO AFFIR

Appellees, pursuant to Rule
Supreme Court of the United States,
of the order of the United States Di
Southern District of Texas entered J
Children Education Litigation, 501 F
1980), and summarily affirmed by the
Appeals for the Fifth Circuit, No. 8
1981. The District Court invalidate
Education Code, which precludes the
rollment of immigrant children not "
the United States, as being violativ
Amendment's equal protection and due
This motion is made on the grounds t
opinion and order conform to prior d

and the questions presented in Ap
Statement ("Jur. St.") are so uns
rant plenary consideration by thi

I.

OPINIONS DELIVERED I

The opinion of the Distric
F.Supp. 544 (S.D. Tex. 1980). Th
Fifth Circuit summarily affirmed
ary 23, 1981. Case No. 80-1807.
from the District Court which was
Appellants, a stay was granted by
Appeal, which stay was vacated by
tember 4, 1980. ___U.S.___ (1980

II

QUESTIONS

In addition to the Questic
the Jurisdictional Statement, the

(a) Whether Section 21.031 Tex
cludes undocumented childr
of Texas from attending th
the due process clause of

(b) Whether Appellants' establ
sufficient to withstand e
equal protection challenge
Education Code.

III

STATEMENT

At issue in this suit is
the use of Texas state funds to

1/ Appellants' arguments i
have consistently relied upon an
120,000 class members. In fact,
enrolled in the public schools a
on the streets were the District
this Court has already noted pro
tical case of Doe v. Plyler, No.
35 students in one school distri
were affirmance granted in this

citizens of the United States

Texas Education Code Ann.Tit.

As applied that statute also p

to exclude undocumented childr

2/ Appellees herein w
court. They are school-age
ents. Some parents are U.S.
lawful immigration status, a
sion of immigration document
State of Texas. The challen
cludes from the public schoo
admitted" into the United St
to those children not "legal
aliens", Jur. Stm. 5, "undoc
"whose presence ... is illeg
drafters of Section 21.031 n
plementation have ever deter
categories of non-citizens a
public schools. Few, if any
in the seventeen consolidate
to be deportable from the Un
and policies. The District
trial stipulation agreed tha
are here to stay." 501 F.Su

The Immigration & Na
comprehensive body of legisl
federal control over the adm
within the United States. T
pellants to define appellees
mentioned in the Immigration
of a persons presence in the
against the deportation stat
§ 1251. Until a person form
process hearing and concede
to be deportable by an Immig
right to continue residing
§§ 1105a and 1252; 8 C.F.R.
v. Barber, 345 U.S. 229 (195
U.S. 48 (1955). None of the
parents have been determine
States.

While Section 21.03
non-U.S. citizen children n
United States, decisions of
tions and INS Operations In
provide numerous opportunit
equities to remain in the U
of the federal government a
admitted." See, e.g. 8 U.S
1253(h), 1254, 1259; 8 C.F.
17(a) and (c), 243.4; Savor
At trial, Mr. Edward Randal
cial responsible for enforc
tioned about the many categ
INS regulations and whether
be deemed excludable from t
21.031. Finally recognizin
involved more than calling
ceded that he could only pr
Reporter's Transcript, Volu
e.g. "Tr. Vol. VIII, 332").

ve
out
le
n-
t
ot

(501 F.Supp. at 549.) Whi
that Section 21.031 exclud
public schools, they never
supra, and no legislative
the parties or the Distric
Supp. at 555, n. 19. As re
in Federati for American
Civil Action No. 79-3269 (

> The very concept
> only to a vague n
> be deported if hi
> known to the auth
> mination of that
> plicated process
> Nationality Act i
> of provisos and e

Id. at 16, fn. 12.

The uncontradicte
that only about ten perce
this country remain here
at 558. According to evi
and appellees only about
in the United States are
And, of this small group
sometimes accompanied by
come across the border wh
immigration documents."
lants based all of their
Court on the harm that wo
by the enrollment of an e
dren", Id. at 575-578, a

3/ Defendants/appe
(estimates 2.7%); Def. Ex
estimate of 1.6%); plaint
#436 (estimates 3.4%).

surd", discovery on pen
and public statements o
number has barely reach

The District Co
ly assume: "children w
great harm." 501 F.Sup
trial unanimously agree
from an education syste
streets", Ibid., suffe
According to the expert
"behavioral difficultie
sion", "breaks with rea
. . ." Id. at 561-562.
and the District Court
largely "here to stay",
eventually "become perm
vices." Id. at 561.
innocent children with
social and educational
the children's parents,
public education" throu
583, and the State enj
Id. at 580. In fact,
order to increase its
after receiving these
ments of the counted c
funding method leaves
Ibid.

Appellants ass
justify the challenged
sources from the failu
fill its constitutiona
regards control of our
move inducements for i

Statement at 8. Both of these alleged justifications were carefully examined and rejected by the District Court.

With regards the fiscal (resource) argument, even after exaggerating the estimated number of undocumented children twelve-fold, appellants still conceded in final argument at trial: "[T]he State never said it didn't have the money in its budget" to educate the plaintiff class -- "it can come up with the money." Id. at 579. In fact, the children who make up the plaintiff class could be educated using less than .08% of the state's existing annual surplus. Further, the independent school districts in Texas receive more Title I federal education money "than any other state in the nation." Id. at 586. They also receive the lion's share of federal bilingual money. Ibid. And, they do this by counting undocumented children "who are [then] excluded from [the] school[s]."

Every expert who testified, every government and private study examined, and the District Court unanimously agree that contrary to appellants' second asserted justification for Section 21.031, the availability of a public education does not act as an inducement to illegal migration into the United States. Tr. Vol. I, 104-09 (testimony of Dr. G. Cardenas); Vol. V, 655 (testimony of Immigration Judge J. Smith); Vol. III, 424, 427-28 (testimony of Dr. J. Bustamante); Vol. XIII, 136 (testimony of Dr. E. Flores). Numerous studies submitted into evidence by both appellants and appellees corroborate these findings.[4/]

[4/] See, e.g., D.Ex. 14-18 (North & Houston, The Characteristics and Role of Illegal Aliens in the U.S. Labor Market, at 145-49 (only 2.7% of undocumented people interviewed had children in U.S. Schools); D.Ex. 14-19, U.S. Comptroller General Report to the Senate Committee on Budget, at 174 (only 1.6% of undocumented immigrants interviewed had non-U.S. citizen children attending U.S. public schools); P.Ex. 436, Bustamante, The Immigrant Worker: A Social Problem or a Human Resource, at 174 (only 3.4% of Mexican undocumented immigrants have ever had children enrolled in U.S. public schools).

While the District Court focuses its opinion on a Fourteenth Amendment equal protection analysis, it also appeared to believe that the same result would be reached under a due process analysis. 501 F.Supp. at 572-73. Appellants have conceded throughout this litigation that undocumented children are entitled to the due process protection of the Fourteenth Amendment. Applying a heightened judicial standard because the challenged statute targets "innocent children", Ibid., and because it "absolutely" deprives "children" of an education, Id. at 572, the District Court found that the statute should be "scrutinized with care . . ." Ibid. However, the District Court concluded that "the State has not shown that excluding children from school is in any way necessary to the improvement of the education in the State." Id. at 582 (emphasis added). 5/ The District Court's opinion is thus consistent with the Court of Appeals decision in Doe v. Plyler, 628 F.2d 448 (5th Cir. 1980), that the challenged statute is not even supported by a rational basis.

Since the issuance of the statewide injunction in this case approximately 10,000 class members have enrolled in the Texas public schools. Reversal of the lower court's order will put these children back out on the streets. Texas education officials in the past month have testified in the Texas Senate Education Subcommittee in support of a bill to repeal Section 21.031; contrary to appellants' projections, neither fiscal nor space problems of any significance have occu Affirmance of the lower court's order is appropriate without necessarily affirming the reasoning by which it was reached. Mandel v. Bradley, 432 U.S. 173, 176 (1977); Certain Named

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5/ This Court gives great weight to the trier of facts. Roemer v. Maryland Public Works Board, 426 U.S. 739, 758 (1976) ("it is not our place to appraise the evidence of lower courts unless it plainly fails to support the finding of the trier of fact . . .")

and Unnamed Children and Their Parents, Applicants v. State of Texas, et al., ___U.S.___, 101 S.Ct. 12, 15 (1980) (Mr. Justice Powell) ("it may be possible to accept the District Court's decision without fully embracing the full sweep of its analysis").

While this Court has already accepted jurisdiction over the appeal taken from Doe v. Plyler, supra, affirmance of the herein case would in all likelihood moot the Plyler case (all of whose plaintiffs are also covered by the injunction issued in this case.)

IV.

ARGUMENT

A. Undocumented Immigrants Are Entitled To The Due Process And Equal Protection Clauses Of The Fourteenth Amendment

From the beginning of this litigation Appellants have agreed that "the Due Process Clause of the Fourteenth Amendment applies to undocumented aliens." Joint Pre-trial Order, Uncontested Issues of Law at 15. The District Court relied upon a number of due process cases in reaching its conclusion that Section 21.031 is unconstitutional. 501 F.Supp. at 572-73. The challenged statute "penalizes children because of acts committed by their parents." Ibid. Imposing the disabilities of illiteracy, psychological damage, and social isolation on the plaintiff children because of the administrative law violations of the parents "is illogical and unjust. Weber v. Atena Casualty and Surety Company, 406 U.S. 164, 175 (1972). Undocumented children, like other young children, seldom have the power to choose their place of residence. For example, the District Court heard testimony from a nine year old girl who entered the United States when she was five months old and who, for the past two years, was excluded from the Texas public schools after moving to the State of Texas from Missouri where she had attended the public schools. Ibid. This young girl's father is a United States citizen and her

mother a lawful permanent resident of the United States. The young girl is documentable, but the family cannot proceed with regularizing her status until they receive her Mexican birth certificate which they have been unable to d to date. Ibid.

Cases involving classifications which punish children for acts committed by their parents are not subject to strict judicial scrutiny. They are nevertheless invali if they are not substantially related to a permissible state interest. Lalli v. Lalli, 439 U.S. 259, 264 (1979) The lower court in this case found that "the evidence received in this proceeding" supported a due process analysi leading to the conclusion that the plaintiff children "deserve no additional burdens or penalties." Ibid. Given Appellants consistent concession that the appellee class entitled to the protection of the Due Process Clause of t Fourteenth Amendment, and appellants' failure to address issue in their Jurisdictional Statement, the District Cou Order should be summarily affirmed on due process grounds As stated by Justice Powell in his September 4, 1980 opin vacating the stay issued by the Court of Appeal, "it may possible to accept the District Court decision without fu embracing the full sweep of its analysis." 101 S.Ct. at accord, Mandel v. Bradley, supra, 432 U.S. at 176.

The thrust of Appellants' Jurisdictional Statemer is that undocumented persons residing in the United Stat are not entitled to the benefits of the equal protection clause of the Fourteenth Amendment. Jur. St. at 5-8. W concluding that "states may treat citizens and resident aliens differently than undocumented aliens," 501 F.Supp 565, the District Court nevertheless determined that und mented persons are not totally excluded from the coverag the equal protection clause of the Fourteenth Amendment. at 567. Appellants suggest that "this Court [has] neve

dressed the question." Jur. St. at 7-8. However, bot
Court and various lower courts have held that the equa
tection clause applies to undocumented persons residin
the United States.

This Court has long given the equal protection
tee a broad scope, holding it applicable "to all perso
in the territorial jurisdiction" of the United States.
Wing v. United States, 163 U.S. 228, 238 (1896) (undoc
deportable alien entitled to Fifth and Sixth Amendment
tion).[6/] It is with pain that appellees are forced to
that the appellee-children and appellee-parents, none
have ever been determined to be deportable from the Un
States, are "persons" within the meaning of the Fourte
Amendment.[7/] The only reported cases which appellees
found concerning the non-application of the term "per
involved "unborn children" who are found not to be pr
by the equal protection clause. Green v. Stanton, 45
567, 570 (N.D. Ind. 1978). The appellee-children her
"born", they are residing and growing up in the State
Texas, and they may well be the citizens of the futur

The appellees are also subject to the State's
nal, civil and tax jurisdiction. See, Pre-trial Orde
13, No. 10 (alien tax liability conceded). And, "onc

[6/] See, also, Levy v. Louisiana, 391 U.S. 68,
(illegitimates); Santa Clara County v. Southern Pacif
118 U.S. 394, 396 (1886) (corporations).

[7/] The time is hopefully long past when courts
seriously entertain questions such as whether "a negr
ancestors were imported into this country, and sold a
. . . become[s] entitled . . . [to sue] in a court of
United States." Dred Scott v. Sanford, 19 How 393, 4
L.Ed. 691 (1857). The courts can no longer defferent
withdraw from the arena of "rights", claiming that it
their function "to decide upon the justice or injusti
a classification. Id. at 405. As Professor Chester
states, the "Dred Scott decision was buried by the Fo
Amendment." Antieau, Modern Constitutional Law, § 15
708 (1969).

have become subject to liability under United Stat
they also have the right to benefit from its prote
United States v. Cortes, 588 F.2d 106, 110 (5th Ci
Manifestly, "the obligation of the State to give t
tion of equal laws can be performed only where its
erate, that is, within its own jurisdiction." Mis
rel. Gaines v. Canada, 305 U.S. 337, 350 (1939).

Not long ago, Judge Friendly declared:

> We can readily agree that the due process
> equal protection clauses of the Fourteenth
> Amendment applied to aliens within the Uni
> States . . . and even to aliens whose pres
> here is illegal.

Balanos v. Kiley, 509 F.2d 1023, 1025 (2d Cir. 197
Castillo-Felix v. INS, 601 F.2d 459, 461, 467 (9th
the Court of Appela held that the Fifth Amendment
tection applied to aliens found deportable but see
lief from deportation under federal statutes. In
Chapman, 508 F.2d 1023 (2d Cir.) cert. denied, 423
(1975), the court found that equal protection appl
persons required to appear in deportation hearings
to determine the legality of their presence in the
States. In Frances v. Immigration & Naturalizatio
532 F.2d 268, 272 (2d Cir. 1976), the Court of App
found that the equal protection clause of the Fift
applied to deportable aliens. Again in Holly v. I
F.2d 1294, 1295-96 (2d Cir. 1976), cert. denied, 4
954 (1978), the court found that the equal protect
applies to aliens who entered the United States un
and who are not under final orders of deportation.

8/ See, also, Doe v. Plyler, supra; Martine
Valley Bus Line, 17 F.Supp. 576, 577-78 (N.D. Ill.
documented immigrant entitled in civil action); Ch
of Illinois, 438 F.Supp. 917 (D.C. Ill. 1977) (equ
tion clause extends to aliens residing in the Unit
Nizanuddowlah v. Bengal Cabaret, Inc., 399 N.Y.S.
(1977) (immigrant on temporary visa entitled to eq
tion); Commercial Standard Fire and Marine Company
484 S.W. 2d 636, 637 (Ct. App. Tex. 1972) (undocum
grants have equal protection right to recover on a
compensation claim).

As the State of Texas, through its Attor

has previously conceded:

> [T]he existing case log indicates that t
> rights of illegal aliens are protected b
> U.S.C.A. § 1981 and Fourteenth Amendment
> the United States Constitution. [Citing
> Balanos v. Kiley, supra; Williams v. Wil
> 328 F.Supp. 1380 (V.I.D. St. Croix 1971)
> (undocumented children entitled to atten
> public schools); Martinez v. Fox Valley
> Lines, supra; and Commercial Standard Fi
> and Marine Company v. Galindo, supra.]

Attorney General of Texas, Opinion No. H-586, a
1975). Appellees agree with the Texas Attorney
opinion that even "illegal aliens are protected
the Fourteenth Amendment to the United States C
We also agree that this conclusion is supported
case law . . ." Ibid.

Appellees totally fail to comprehend app
arguments which suggest that both the federal a
ious state governments will become impotent to
sifications based on alienage should this Court
undocumented immigrants fall under the coverage
equal protection clause. Jur. St. 5-8. Appel
tion that application of the equal protection
documented immigrants will result in their eli
a broad array of social services is without me
lower court cases have applied the equal prote
to undocumented or deportable immigrants and,
ing the approrpriate standard of review, have
documented immigrant ineligible for the benefi

9/ See, e.g., Flemming v. Nestor, 363 U.
U.S. V. Gordon-Nikkar, 518 F.2d 97 (5th Cir. 1
Civiletti, 617 F.2d 745 (D.C. Cir. 1979); Cast
INS, 601 F.2d 459 (9th Cir. 1979); Yassini v.
F.2d 219 (9th Cir. 1980).

Contrary to appellants' concerns, the Distri
ly reasoned that "states may treat citizens
aliens differently than undocumented aliens
at 565. In this case and Doe v. Plyler, the
simply found that the State of Texas had fa
even a rational basis for excluding childre
been determined to be deportable aliens, fr
schools.

The cases cited by appellants lend
to their position. Appellants totally misc
tio decidendi of Burrafato v. Department of
554 (2d Cir. 1975), cert. denied 424 U.S. 9
rafato concerns subject matter jurisdiction
ment "procedural due process" questions inv
review of visa issuance decisions made abro
officers of the U.S. State Department. The
in Burrafato had nothing to do with the imm
of the plaintiff in that case. See, Browne
352 U.S. 180, 184 (1956). De Canas v. Bica
(1976), also relied upon by appellants likew
ing on the equal protection clause but rath
whether a state law was preempted by the Im
Nationality Act. Id. at 937. United State
479 F.Supp. 519 (D.Alas. 1979), involved th
of Japanese nationals who were not reside
territory of the United States and thus th
ly within the authority distinguishing the
grants within and without the territory of
Further, the case involved a question of f
over international affairs and the interpr
Fifth Amendment in that particular context

Given that appellants' Jurisdictio

clusively relied upon the contention that
dren cannot seek judicial review under the
laws of the Fourteenth Amendment, we respe
appellants present no substantial question
by the Court, and that the order of the Di
be summarily affirmed.

B. Appellants Have Not Articulate
Justification To Support The
Statute

Appellants argue, without analysi
has articulated [a] sufficient basis to s
Jur. St. at 9, citing Dandridge v. Willia
(1970). This conclusory assertion, offer
tual support, should not justify plenary-
Assuming that equal protection and due pr
applicable, only the District Court thus
searching examination of the alleged just
statute; and the trial court provided ext
grounded reasons for concluding that Texa
its total exclusion of the appellee-child
the public schools.

The State of Texas offers only t
for its policy of excluding innocent chi
lic schools: "to protect its resources,
incentives for illegal immigration . . .
With regards the first assertion, the lo
instant action and in Doe v. Plyler, hav
21.031 bears neither a substantial nor a
ship to the preservation of the State's
resource arguments were entirely based o
approximately one-hundred-twenty thousan
age children resided in the State of Tex

the public schools but for Section 2
575-79. The trial court, after hear
nesses found this estimate to be "ab
able" and "grossly over-estimated .
ing the past school year, only ten t
umented children have enrolled in th
as a result of the injunction issued
noted throughout the District Court'
Texas conducted absolutely no studie
umented children on its public schoo
in 1975 to prohibit their enrollment
numerous affidavits attached to appe
Vacate Stay submitted to this Court
of the poorer school districts in Te
state funds based on the number of s
financially better off enrolling the
noted by the District Court in Doe v
requires school districts "to exclud
from [their] ADA [average daily atte
amount of state funds [they] receive
And, the State often stated during t
that it "has the duty to protect the
the local independent school distric

The State's "resource" argum
more questionable given that Texas "
with a surplus of approximately $2.1
fiscal policies which prohibit defic
It should also be understood that th
undocumented children in order to ob
funds. This leads to a windfall for
admitted into the Texas public schoo
recognized that the parents of exclu

significantly to the funding of ed

the payment of taxes. On July 23,

troller stated:

> illegal aliens have been p
> vehicle tax and gasoline t
> sidents. Some may treat t
> citizens but they are firs
> Frankly, its time we quit
> some kid was born and star
> kind of education all our

Appellees' Application to Vacate S

phasis added). In fact, appellant

trial Order that "undocumented ali

the State of Texas are not exempt

requirements." ("Uncontested Issu

counsel for the State noted in clo

> There is no place in this
> the State has said the St
> have enough money. Not o
> come up with the money.
> legislature to fund certa
> go down and get them to f
> never said it didn't have

501 F.Supp. at 579.

Appellants should not now

Section 21.031 is justified by a

tives for illegal immigration . .

fact, "[n]either the court nor th

a shread of legislative history a

ment" enacting Section 21.031. 5

Quite contrary to their current c

pulated as an uncontested issue o

Order that "the availability of e

the major pull-factor in attracti

into the United States." Joint P

9. As noted above at page 8, bot

tary evidence submitted by both p

established that the availabilit

for minor children plays no me
migration of undocumented immi
Appellants' conclusory assertio
in its Jurisdictional Statemen
review by this Court.

CONCL

For the reasons stated
submit that appellants present
the decision of this Court, an
court should be affirmed. Thi
proximately ten thousand child
public schools of Texas and wo
pending case of Doe v. Plyler.

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DATED: May 29, 1981

CERTIFICA

I, PETER A. SCHEY, c

by certify that a true and c

Motion to Affirm has been se

ing same in the United State

to:

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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1980

IN RE: ALIEN CHILDREN
EDUCATION LITIGATION

STATE OF TEXAS AND
TEXAS EDUCATION AGENCY

Appellants

V.

UNITED STATES

Intervenor-Appellee

AND

CERTAIN NAMED AND UNNAMED
UNDOCUMENTED ALIEN CHILDREN

Appellees

On Appeal From The United States Court Of
Appeals For The Fifth Circuit

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

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Attorneys for Appellees

* Counsel of Record

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OCTOBER TERM, 1980

IN RE: ALIEN CHILDREN
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On Appeal From The United States Court Of
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IN FORMA PAUPERIS

The United States District Court for the Southern District of Texas entered its order on July 21, 1980, certifying this suit as a Texas-wide class action, declaring unconstitutional Section 21.031, Texas Education Code, and granting certain class relief. The opinion and order of the District Court are officially reported at 501 F.Supp. 544 (S.D. Tex. 1980).

The matter was appealed to the United States Court of Appeal for the Fifth Circuit, No. 80-1807, which Honorable Court summarily affirmed the district court on Februa 23, 1981. Defendants/appellants filed a notice of appeal in the Court of Appeals on March 2, 1981. Appellants file their Jurisdictional Statement on May 8, 1981.

Appellees Sandra Cardenas and Maria Cardenas, and those class members granted relief by the District Court, ask leave to file the attached Motion to Affirm and to proceed in this Court in forma pauperis, without prepayment of fees and costs or security therefor, pursuant to Supreme Court Rule 46. The affidavits of appellees Sandra Cardenas and Maria Cardenas in support of this motion are attached heretó.

Respectfully submitted,

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DATED: MAY 29, 1981

By: Peter A. Schey
PETER A. SCHEY
Counsel for Appellees

CERTIFICATE OF SERVICE

I, PETER A. SCHEY, counsel for appellees, do h
by certify that a true and correct copy of the foregoi
Motion to Proceed In Forma Pauperis has been served up
all parties by placing same in the United States Mail,
class, addressed to:

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Washington, D.C.

On this 29th day of May, 1981.

PETER A. SCHEY
Attorney for Appell

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STATE OF TEXAS AND
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Appella

VS.

UNITED STATES
Interve

AND

CERTAIN NAMED AND UNNAMED
UNDOCUMENTED ALIEN CHILDREN
Appelle

AFFIDAVIT

I SANDRA CARDENAS, being first duly sworn according depose and say, in support of the Motion For Leave In Forma Pauperis, the following:

1. I am one of the named-plaintiffs in mentioned cause of action.
2. Because of my poverty I am unable t of this litigation.
3. I am unable to give security for th
4. Because of my poverty I have not pa in this litigation and I have been by legal aid lawyers.
5. I respectfully request that I and m be allowed to proceed in forma paup

Sandra Ca
Sandra Cardena

STATE OF TEXAS I

COUNTY OF HARRIS I

Before me, a notary public, on this
appeared SANDRA CARDENAS, known to me to be the p
is subscribed to the foregoing instrument and, b
duly sworn, declared that the statements therein
true and correct.

Given under my hand and seal of off
day of May 1981.

Marie A. V
Notary Public in
Harris County T E

My commission expires:

July 14, 1985

MARIE A. VILLARRE
Notary Public in Harris Coun
My Commission Expires July

NO. _____

IN THE
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OCTOBER TERM, 1980

IN RE: ALIEN CHILDR
EDUCATION LITIGATIO

STATE OF TEXAS AND
TEXAS EDUCATION AGENC

VS.

UNITED STATES

AND

CERTAIN NAMED AND UNNAME
UNDOCUMENTED ALIEN CHILDR

AFFIDAVIT

I, MARIA CARDENAS, being first duly sworn
depose and say, in support of the Motion Fo
In Forma Pauperis, the following:

1. I am one of the named-plaint
mentioned cause of action.

2. Because of my poverty I am
of this litigation.

3. I am unable to give securit

4. Because of my poverty I hav
in this litigation and I ha
by legal aid lawyers.

5. I respectfully request that
be allowed to proceed in fo

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Mari

STATE OF TEXAS I

COUNTY OF HARRIS I

Before me, a notary public
appeared MARIA CARDENAS, known to me to
is subscribed to the foregoing instrume
duly sworn, declared that the statement
true and correct.

Given under my hand and se
day of May 1981.

Marie
Notary P
Harris C

My commission expires:

July 14, 1985

Notary Pu
My Com